To Be Argued By:
Jackie L. Gross
Time Requested:
10 Minutes

A.D. No. 2012-01904

Supreme Court of the State of New York
Appellate Division : Second Department

In the Matter of
JOHN COOK,

Petitioner-Appellant-Cross-Respondent,

-against-

THE NASSAU COUNTY POLICE DEPARTMENT; THOMAS C. KRUMPTER, in his official capacity as Acting Commissioner of the Nassau County Police Department; and DETECTIVE SERGEANT ISRAEL SANTIAGO, in his official capacity as Commanding Officer of the Legal Bureau of the Nassau County Police Department,

Respondents-Respondents-Cross-Appellants.

BRIEF FOR RESPONDENTS-RESPONDENTS-CROSS-APPELLANTS

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Nassau County Clerk Index No. 11-014558

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – SECOND DEPARTMENT

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Statement Pursuant To CPLR 5531

1. The index number of the case below is Nassau County Supreme Court Index Number: 11-014558.

2. The name of the Petitioner-Appellant-Cross-Respondent is John Cook. The name of the Respondents-Respondents-Cross-Appellants are The Nassau County Police Department, Thomas C. Krumpter, in his official capacity as Acting Commissioner of the Nassau County Police Department; and Detective Sergeant Israel Santiago, in his official capacity as Commanding Officer of the Legal Bureau of the Nassau County Police Department. Upon information and belief, there have not been any changes in the parties named in this litigation;

however Thomas C. Krumpter is no longer the Acting Commissioner of the Nassau County Police Department.

3. This proceeding was commenced in the Supreme Court of the State of New York, Nassau County.

4. This proceeding was commenced by service of a notice of petition and a petition dated October 11, 2011. A motion to dismiss the petition was served on or about December 6, 2011.

5. This Article 78 proceeding was brought by Petitioner John Cook, seeking to compel the production of certain confidential police department records.

6. This appeal and cross-appeal is from the Short Form Order of the Honorable F. Dana Winslow, dated and entered on February 2, 2012.

7. This appeal is being perfected by the use of the reproduced full record method of appeal.

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Questions Presented

1. Were all of the records concerning an internal investigation of a police officer exempt from disclosure laws regarding such police records?

   -- Most of the internal investigation records were properly deemed to be exempt from disclosure as such police personnel records are statutorily protected from disclosure; however, the court erroneously deemed one page of those records to be subject to disclosure after some unidentified information was redacted from that record.

2. Did the court below erroneously order the release of communications between the former Police Commissioner and a well-known media commentator as they concern private information?

   -- Yes, these records should have been withheld from disclosure as they contain information about private individuals and thus are not subject to disclosure under New York's Freedom of Information Law.

3. Were records concerning Police Department contacts at private residential addresses properly deemed to be exempt from disclosure?

   -- Yes, these records are exempt from FOIL as disclosure would be an invasion of personal privacy, and they also are considered confidential pursuant to the state law concerning E-911 records.

Preliminary Statement

This case initially arose out of a story written by Petitioner John Cook for Gawker Media about the marriage of well-known media personality Bill O'Reilly. A couple of months thereafter, Petitioner submitted a Freedom of Information Law ("FOIL") request seeking records from the Nassau County Police Department concerning Mr. O'Reilly and his wife, among other things. Petitioner's follow-up writing claimed that Mr. O'Reilly tried to use his acquaintance with the County's former Police Commissioner in order to have the Police Department investigate an alleged relationship of Mr. O'Reilly's wife with a County police officer.

The Police Department denied the FOIL request, and that denial was upheld on Petitioner's administrative appeal. Petitioner subsequently instituted an Article 78 proceeding, and Justice Winslow ultimately ordered the release of some of the requested records to the Petitioner as well as to the media generally. Both parties appealed that decision.

On this appeal, the Petitioner continues to seek: a) records concerning an internal investigation of a County police officer; b) correspondence records concerning Mr. O'Reilly and c) records concerning police responses to two residential addresses in the County.

The County is seeking to modify the court's order as it pertains to the release of a redacted citizen complaint summary record which is part of the Police Department's internal investigation file. This record was apparently redacted to some degree by the court, but it is not known exactly what information was so redacted. The County also appeals the release of certain correspondence records – also redacted to some unknown degree by the court.

The Police Department's internal investigation file is entirely covered by the police personnel records confidentiality exception under New York Civil Rights Law Section 50-a. As such, none of the records in that file should be disclosed to the public. Petitioner argues on this appeal that all of the records in that file should be disclosed, albeit with appropriate redactions. However, redaction of any records in that file is inappropriate in this case as no amount of redacting can prevent the records from being used in a way that would seriously humiliate and harass Police Department personnel, all in contravention of the Civil Rights law at issue.

The correspondence records are also protected from disclosure because they contain a large amount of personal information. As the court did not clarify which part of these records it was redacting prior to disclosure, it is respectfully requested that this matter at least be remanded

for clarification on this point and the County can then determine whether or not there remains a basis for appealing this part of the court's decision.

Finally, the Petitioner's appeal of the denial of his request for records concerning police responses to certain residential addresses is completely without merit. The only existing records in this regard are fully protected by the state law shielding E-911 records, and in any event, those records are also protected from disclosure by the personal privacy exception to FOIL.

For all of the reasons detailed in the record and on this appeal, the decision of the court below should be modified as to its order to disclose a redacted version of the internal investigation citizen complaint summary record. Furthermore, the correspondence records should be fully protected from disclosure, or alternatively, this matter should be remanded in order to ascertain what redactions the court intended to make prior to releasing all of the other documents to Petitioner and the media. Justice Winslow's order should otherwise be affirmed in all respects.

Facts

I. The Request for Records by Gawker Media

This is an Article 78 proceeding commenced by Petitioner John Cook, ("Petitioner" or "Cook"), a blogger for Gawker Media and the website, www.gawker.com, concerning access to confidential Nassau County Police

Department records. (The Respondents-Respondents-Cross-Appellants shall be referred to collectively as "Respondents" or the "Police Department").

In June 2011, Petitioner had written on his blog about the marriage of the well-known media personality Bill O'Reilly, and reported that Mr. O'Reilly's marriage seemed to be "on the outs". (Joint Record on Appeal at 38).[1] Petitioner's follow-up writing claimed that Mr. O'Reilly tried to use his acquaintance with the County's former Police Commissioner in order to have the Police Department investigate an alleged relationship of Mr. O'Reilly's wife with a County police officer. (R. 38-42).

On or about August 9, 2011, Petitioner submitted a FOIL request for several groups of Police Department records, many of which specifically referenced Mr. O'Reilly and his wife. (R. 36-37). Petitioner's request initially listed nine categories of records. (R.36-37). On this appeal, he has grouped the documents relevant to his appeal into three (3) categories:

> A. records pertaining to two internal investigations – one regarding the investigation of the unknown detective, purportedly at the behest of Mr. O'Reilly, and the other regarding leaks of information pertaining to that first investigation ("Internal Investigation Records" or "Pet. Category A");

[1] Page references in the Joint Record on Appeal are referred to as "R. ___".

B. records of call logs, schedules of meetings, correspondence, and other contacts between the O'Reilly's and former Commissioner Mulvey ("Correspondence Records" or "Pet. Category B"); and

C. records of NCPD contacts with two residential addresses belonging to the O'Reilly's ("Residential Records" or Pet. Category C").

(Pet. Br. at 3-4).

II. The County's Responses to the Records Request

On or about August 18, 2011, Petitioner's requests were denied by the Police Department based on relevant provisions of the New York Public Officers Law Article 6 (New York's Freedom of Information Law, or "FOIL") and the Civil Rights Law Section 50-a(1). (R. 43-44).

On or about August 23, 2011, Petitioner administratively appealed the denial of his requests to the Acting Police Commissioner. (R. 45-50).

On or about September 27, 2011, the denial of Petitioner's requests was upheld by Israel Santiago, Detective Sergeant and Commanding Officer of the Legal Bureau on behalf of the Acting Police Commissioner, for the reasons stated in the denial letter. (R.51-53).

III. The Court Proceedings to Date

On or about October 11, 2011, Petitioner filed an Article 78 petition in the Supreme Court of Nassau County seeking to overturn the Police

Department's denial of his record requests. (R. 12-53). The County responded by way of a motion to dismiss (R.54-59).

On or about January 31, 2012, the Honorable Justice F. Dana Winslow issued a short form order memorializing his *in camera* review of documents relating to this litigation. (R. 60).

On or about February 2, 1012, Justice Winslow held a hearing and informed the parties of his determination on the record requests. On that same day, by short form order dated February 2, 2012, Justice Winslow ordered the disclosure of the following documents to the Petitioner and the media through the Public Relations Officer of the Nassau County Court System:

> 1. NCPD-Department Procedure-Freedom of Information Requests, with cover letter dated January 11, 2012, from the Nassau County Attorneys' office to the Court;
>
> 2. Letters on NCPD stationery, dated March 5, 2010 and April 9,2010 from Commissioner Lawrence W. Mulvey ("Mulvey") to O'Reilly; and letter, dated August 24, 2010, from Mulvey to O'Reilly;
>
> 3. All email correspondence between Mulvey and O'Reilly, and between O'Reilly and Mulvey, as redacted, numbered 1 through 17 (although the Court notes page 8 was blank);
>
> 4. NCPD Citizen Complaint Summary, as redacted; and
>
> 5. Cover letter, dated January 19, 2012, from the NCPD to the Court enclosing records in this matter.

(R. 84).

Justice Winslow also determined that all other submitted records were deemed to be Internal Affairs Report records and not subject to disclosure. (R.84) Although Justice Winslow's order did not specify in detail the reasoning behind his determinations, he incorporated by reference all determinations made on the bench during the February 2, 2012 court conference. (Transcript at R. 61-82). The short form order also stated that no records were to be distributed until "after the expiration of a twenty-four hour period from the date and time of signing of this Order." (R.84).

The County filed its notice of appeal that same day, (R.3), and the Petitioner filed his notice of cross-appeal on February 14, 2012, (R.5), thus staying the distribution of any documents to Petitioner or to the media until after this appeal is finally resolved.

IV. The Records at Issue on this Appeal

The records at issue on this appeal will be grouped in this brief into the categories as depicted on the following chart, which begins on the next page:

Records at Issue on This Appeal

Justice Winslow Disclosure Category:	Not Appealed	County Appeal	Petitioner Appeal Category A Internal Investigation Records	Petitioner Appeal Category B Correspondence Records	Petitioner Appeal Category C Residential Records
#1 NCPD Procedure for FOIL Requests, with cover letter to the Court	X				
#2 & #3 Redacted letters and emails		X			
#4 Redacted citizen complaint summary		X			
#5 Cover letter to the Court	X				
"All other submitted records" are not subject to disclosure			X		X

As explained below, Justice Winslow appropriately withheld from disclosure most of the Internal Investigation Records requested by Petitioner. However, a one-page citizen complaint summary record (Winslow Category #4) was ordered to be released with certain unspecified redactions, even though this page is part of, and indistinguishable from, the other Internal Investigation Records. Thus, that one-page record is, by its very nature, part of a police personnel file and thus fully protected from

disclosure under New York Civil Rights Law Section 50-a. Although Justice Winslow indicated he would redact some of the information on that summary sheet, it is unclear exactly what was to be redacted, so at a minimum, it is requested that this matter be remanded so that the County may ascertain what was to be redacted prior to disclosure to Petitioner or the media.

Similarly, Justice Winslow erred in ordering the release of the requested correspondence and emails, (Winslow Categories ##2 & 3), as those records contain personal information and thus are not subject to disclosure under FOIL. In any event, as it is unclear exactly which part(s) of those records were to be redacted by the court prior to disclosure, at a minimum it is requested that this matter be remanded so that the County may ascertain what was to be redacted in those letters and emails prior to disclosure to Petitioner or the media.

Finally, Justice Winslow correctly denied Petitioner's request for Police Department records regarding police responses to two residential addresses (Winslow General Denial of "all other submitted records"). Those records are indeed protected by the state law regarding E-911 calls, and are also subject to personal privacy protections under FOIL.

Thus, the decision of the court below should be modified as to its order to disclose a redacted version of the internal investigation civilian complaint summary sheet. The correspondence records should also be protected from disclosure or alternatively, this matter should be remanded in order to ascertain what redactions the court intended to make prior to releasing all of the other documents to Petitioner and the media. Justice Winslow's order should otherwise be affirmed in all respects.

Argument

POINT I

THE REQUESTED POLICE PERSONNEL RECORDS ARE STATUTORILY PROTECTED FROM DISCLOSURE

Petitioner does not dispute that a police department's internal investigation files are generally protected from disclosure pursuant to Civil Rights Law 50-a. Petitioner's argument on this appeal is that he should be given some sort of limited disclosure to those files, with certain information redacted by the court. However, such disclosure of police personnel records is contrary to applicable law and not appropriate under the specific facts of this case.

As a preliminary matter, former Second Deputy Commissioner Flanagan's affidavit is not insufficient, contrary to Petitioner's claim in his

brief on appeal. (Pet. Brief at 1n.9). Flanagan specifically states in his affidavit, which he signed under oath, that he was "familiar with the IAU investigation which is the subject of the petitioner's request," (R. 58 ¶4), that the investigation "related to allegations of misconduct and purported violations of the rules and regulations of the Nassau County Police Department," (R. 58 ¶6), that there was no allegation of criminality on the part of the investigated officer, (R. 58 ¶9), and that IAU investigation records are indeed part of the officer's personnel record and those records are used to evaluate the officer's performance toward continued employment or promotion. (R.58 ¶8).

As to Petitioner's claim that there has been no showing that the release of the records would create any potential of abusive use against an officer, (Pet. Br. at 9), it is self-evident throughout the record on this appeal that disclosing the name of any officer linked with an investigation about the personal life of a prominent media personality would be at a minimum, embarrassing to any reasonable person, and more likely, deeply humiliating. Therefore, contrary to Petitioner's conclusory allegation, the evidence in the

record is more than sufficient to establish the basis for the application of Civil Rights Law Section 50-a to apply to the records at issue.[2]

Specifically as to Petitioner's Category A request – for the disclosure of the Police Department's Internal Investigation Records concerning an alleged investigation of a County police officer – N.Y. Civil Rights Law Section 50-a(1) shields these types of records from disclosure. Any such records relating to misconduct complaints are "the very types of documents that Civil Rights Law Section 50-a(1) was designed to protect in the first instance." *Matter of Argentieri v. Goord*, 25 A.D.3d 830, 832 (3d Dept. 2006) (*quoting Matter of Ruberti, Girvin & Ferlazzo v. N.Y. State Div. of State Police*, 218 A.D.2d 494, 497 (3d Dept. 1996). The purpose of the law was to protect officers from the use of records, including unsubstantiated and irrelevant complaints of misconduct, as a means for harassment and reprisals. *Matter of Prisoners' Legal Services of N.Y. v. N.Y. State Dept. of Correctional Services*, 73 N.Y.2d 26, 31 (1988). As stated succinctly in *Matter of Gannett Co. v. James*, 108 Misc. 2d 862, 868, *aff'd* 86 A.D.2d 744 (4th Dept. 1982), "[a]lthough the bill jacket for Civil Rights Law Section

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[2] It is also rather bewildering that a civil liberties advocacy organization such as that representing Petitioner would casually insert in the brief on this appeal a reference to an indictment in an unrelated case (prior to any trial, much less conviction) for the obvious purpose of tainting that person's integrity and his credibility in this case. *See* Pet. Br. at 5.

50–a shows that many questioned the necessity or desirability of such singular statutory protection for the personnel records of police officers, the legislature has spoken."

Notwithstanding the settled state of applicable law, Petitioner opines that courts have articulated a "consistent" preference for redaction of such records, as opposed to complete protection from disclosure. (Pet. Br. at 12). This position is an overstated characterization of the relevant legal standards and the pattern of court interpretations of those standards.

Although Petitioner has identified some cases permitting limited disclosure of police personnel records in other contexts, such limited disclosure is not routine nor is it consistently ordered. In fact in some cases, it has been held that redacting names of officials involved does not sufficiently protect the confidentiality of the records otherwise exempt under the law. For example, in *Gannett Co. v. Riley*, 161 Misc.2d 321, 327 (Monroe County Sup. Ct. 1994), the court stated that "if the Legislature had intended that personnel records, otherwise exempt under Civil Rights Law § 50–a, could be obtained by simply redacting the names or other identifying features of the individuals, it would have so provided in the statute." The requested internal investigation records in *Riley* were not subject to disclosure, even with redactions, because "[c]ommon sense indicates that

simply redacting names might not be sufficient to protect the confidentiality of the records otherwise exempt under Civil Rights Law § 50–a."

Similarly, in *Matter of NYCLU v. City of Schenectady*, prior to the case being reversed on other grounds, the appellate court explained that:

> Even a cursory review of the record makes plain that petitioner requests such materials as a watchdog organization seeking to cast a critical eye upon the inner workings of the City's police department—more specifically, that department's internal affairs division. In this regard, it cannot seriously be argued that documents relating to complaints and investigations of police misconduct and the disciplinary measures, if any, imposed carry with them only the slightest potential for abusive use against the officer(s) involved. Moreover, given the records sought and the particular circumstances of this proceeding, we are not persuaded that redacting identifying details would alleviate the potential for abuse.

306 A.D.2d 784, 786-87 (3d Dept. 2003) (emphasis added), *rev'd on other grounds*, 2 N.Y.3d 657 (2004).

Justice Winslow also remarked during the hearing on this matter that courts have "consistently" ruled that internal investigation records are unavailable for disclosure under FOIL, although he noted there were a "few" cases moving in the direction of limited disclosure. (R.66).

In another context, government records concerning a social services investigation were not subject to disclosure, even by redacting some information, because it was "simply not possible to release the materials sought, and keep the requisite confidentiality. The court has examined them,

and even with redaction of names, etc., the persons mentioned in the report will have their identities revealed. In these circumstances, the public's interest in confidentiality, as enunciated in the statute, must prevail." *N.Y. News v. Grinker*, 142 Misc. 2d 325, 328 (N.Y. County Sup. Ct. 1989).

This case presents the quintessential example of information that has the potential to be used adversely against County police officers. Such wrongful disclosure cannot be cured simply by applying black lines of redaction.

Unlike most of the cases cited by Petitioner, this is not a case involving factual or statistical information that easily allows for the removal of identifying names and addresses. Rather, it is a case involving a very personal matter and the disclosure of any details about that investigation will undoubtedly create the very harm which the legislature has sought to avoid when it enacted Civil Rights Law Section 50-a. As reasoned by the Court of Appeals in the seminal case in this area, *Matter of Daily Gazette Co. v. City of Schenectady*, 93 N.Y.2d 145, 159 (1999), although there may be times when redaction can allow for the dissemination of records without thwarting the underlying purpose of Civil Rights Law Section 50-a, here, as in *Daily Gazette*, "the subject of petitioners' request itself demonstrates the risk of its use to embarrass or humiliate the officers involved."

Although the Petitioner attempts to paint this as a situation where nefarious conduct has occurred and should be widely exposed, the nature of this case is, in reality, one in which record disclosure will ultimately permit the publishing of personal details about a well-known member of the community at the expense of harassing and humiliating any police officers named in those records. Hence, any disclosure, even disclosure limited to a one page civilian complaint summary record or otherwise, redacted or not, is exactly what Civil Rights Law Section 50-a sought to prevent. For these reasons, the entire Internal Investigations File, including the civilian complaint summary record, are exempt from disclosure and should not be provided to either the Petitioner or the media in any form, redacted or otherwise.

POINT II

PRIVATE INFORMATION CONTAINED IN COMMUNICATIONS WITH A PRIVATE CITIZEN ARE NOT SUBJECT TO PUBLIC DISCLOSURE

Petitioner's second category of document requests is for various Communications Records, essentially communications between the County's former Police Commissioner and Mr. O'Reilly, a private citizen. (Pet. Category B)

After conducting his *in camera* review, Justice Winslow determined that certain letters and e-mail communications between the former Police Commissioner and Mr. O'Reilly would be disclosed to the Petitioner and the media, with certain "personal information" redacted, (R. 77), although it is unclear exactly what personal information was to be redacted. Any information contained in those records that is of a private nature, such as names, addresses, phone numbers and references to other unrelated private activities or other sensitive confidential information, should not be disclosed because it indisputably is subject to personal privacy protections under applicable law, including N.Y. Pub. Off. Law Section 87(2)(b).[3] The judge's order and his statements in court are too vague to know with any certainty at this time exactly what redactions he made prior to ordering that the records be disclosed.

In this regard, category 2 in Justice Winslow's order references letters to be disclosed, but the order itself does not specify if any information (such as names, addresses and other private activities) was to be redacted prior to disclosure to Petitioner and the media. (R.84). Similarly, category 3 in Justice Winslow's order only references emails "as redacted", but does not

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[3] See also the discussion below in Point III regarding FOIL's personal privacy exception.

specify what information was going to be redacted from those emails prior to disclosure to the Petitioner and the media. (R.84).

It is therefore respectfully requested that this matter be remanded, at least as to these unspecified redactions, and that the letters and emails specified in Categories 2 and 3 be withheld from disclosure until counsel for the County has been given the opportunity to review all of the Judge's specific redactions so that it can then be determined whether the County should appeal that part of the order prior to disclosure to Petitioner and the media. Otherwise, once those records are disseminated to Petitioner and the media, it will be impossible to challenge the completeness of the judge's redactions, and the resulting harm to the personal lives of third parties may be irreversible.

POINT III

RECORDS RELATING TO POLICE CONTACTS AT A PRIVATE PERSON'S RESIDENCE ARE NOT SUBJECT TO DISCLOSURE UNDER FOIL'S PERSONAL PRIVACY EXCEPTION AND THE STATE'S E-911 LAW

Finally, Petitioner seeks records relating to police contacts at two private residential addresses. (Pet. Category C). Such record requests, however, are fully exempt under FOIL as they constitute an unwarranted invasion of personal privacy. *N.Y. Pub. Off. Law §87(2)(b)*. As the Third Department stated in the oft-cited case *Matter of Dobranski v. Houper*, an

invasion of personal privacy is measured by what would be "offensive and objectionable to a reasonable person of ordinary sensibilities." 154 A.D.2d 736, 737 (3d Dept. 1989).

It is self-evident that here, where the media is seeking police records about a prominent member of the community, disclosure of information concerning alleged police responses to any residential address would be offensive and objectionable to any reasonable person and would certainly constitute an invasion of personal privacy.

In another context, it was aptly stated that confidentiality of government investigations into people's personal lives furthers an important governmental and societal interest. It ensures that the subject of the reports and their families "be spared unnecessary embarrassment and encourages the frank disclosure of information...." *Grinker*, 142 Misc.2d at 328. Preventing disclosure of that information also serves to protect the identity of sources and persons who cooperate in an investigation, who might otherwise be reluctant to come forward and cooperate. Disclosure of sources of information could have a chilling effect, hampering efforts in providing services to distressed families. *Id.*

Furthermore, there is always an obvious risk to the safety of a resident when information pertaining to police responses to residential addresses is

sought. *See*, *Matter of Stronza v. Hoke*, 148 A.D.2d 900, 901 (3d Dept. 1989) (Only a "possibility" that disclosing the requested information would endanger the lives or safety of individuals is required in order to prevent disclosure of such information on those grounds). This is an especially valid concern in this case where the named person is a well-known political commentator on an international scale. Thus, this confidential information also should not be disclosed pursuant to N.Y. Public Officers Law Section 87(2)(f).

In any event, as stated by Detective Sergeant Santiago, (R.53), the only such responsive records existing in this category are those that are part of the County's E-911 system. As such, pursuant to N.Y. County Law Section 308(4), this category of records is unequivocally statutorily exempt from public disclosure.

The underlying policy of FOIL is of course to balance the competing private and public interests. Here, the fact that this Petitioner may be able to articulate a reason why disclosure of the private records may have some incidental benefit to the public is far outweighed by the inherent rights of community members – even well-known community members – to retain privacy in their private matters and to be able to rely on the Police Department to serve and protect them if necessary. They should not fear

that asking for such protection will result in an invasion of their privacy and thus discourage them from asking for the most basic of governmental services that every community member is entitled to receive, regardless of their stature or notoriety.

Conclusion

Open government is a touchstone of our society and access to government records is an inherent part of that openness. However, such access is not without some reasonable limits against other valuable competing interests, such as the rights of persons choosing to protect the community, and the inherent personal privacy rights of all community members as well. In such cases, there must be a careful balancing act performed, based on the exigencies of each case under review.

As demonstrated above, in this case the record disclosure sought by the Petitioner should be limited in certain respects, and the decision of the court below should be modified as to its order to disclose any part of the Internal Investigation File. The Correspondence Records should also be protected from disclosure, or alternatively this matter should be remanded in

order to ascertain what redactions the court intended to make prior to releasing all of the other documents to Petitioner or the media. Justice Winslow's order should otherwise be affirmed in all respects.

Dated: Mineola, New York
July 12, 2012

Respectfully submitted,
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Certification of Compliance

I certify that pursuant to 22 NYCRR §670.10.3, the within Respondents-Appellants' brief was prepared on a computer. A proportional spaced typeface was used, as follows:

Typeface: Times New Roman

Point size: 14 (12 for footnotes and charts)

Line spacing: Double (single for footnotes and quotations)

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any authorized appendix or addendum is 4,429.

Jackie L. Gross

Signature on brief deemed a representation of the accuracy of this certificate pursuant to Rule 670.10.3(f).